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Department of Toxic Substances Control

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Arnold Schwarzenegger
Governor

To All Interested Parties:

The Department of Toxic Substances Control (DTSC) will conduct a public workshop to solicit input on:

Financial Assurance and the Postclosure Period

The workshop will be held at the following time and place:

Date: **October 17, 2005**

Time: **9:00 – 4:30**

Location: **Sierra Hearing Room
Joe Serna Jr. Cal/EPA Headquarters Building
1001 I Street, 2nd Floor
Sacramento, California 95812**

Note: Visitors must check in with security upon entering the Cal/EPA building.

DTSC representatives will summarize the issues. After the short presentation, DTSC will solicit comments and suggestions from workshop attendees. Below is a brief background on the issues. DTSC anticipates the need to hold additional focused workshops on the three topics identified in this announcement.

If you are unable to attend, the workshop may be monitored live via audio webcast. The broadcast link will be available on the Cal/EPA website at: <http://www.calepa.ca.gov/broadcast/>. Questions and comments may be submitted in real time by sending an e-mail to: sierrarm@calepa.ca.gov. DTSC staff will monitor e-mails and, as time allows, read them aloud. All questions and comments submitted via e-mail will be considered in DTSC's future actions.

*** This e-mail address is valid only for the duration of the workshop; all other correspondence should be made in accordance with the contact information listed at the end of this notice.

Travel information is available at <http://www.calepa.ca.gov/EPAbldg/Location.htm>.

To request special accommodations for persons with disabilities, please contact Barry Carr at (916) 323-6044 or bcarr@dtsc.ca.gov.

Notice to Hearing Impaired: to obtain additional information, use the California State Relay Service at 1-888-877-5378 (TDD). Ask them to contact Barry Carr at (916) 323-6044.

ISSUES:

The Department of Toxic Substances Control (DTSC) has the primary oversight over the regulation of hazardous waste in California, including hazardous waste facilities and their financial assurance mechanisms for closure, postclosure, corrective action, and liability. Title 22, California Code of Regulations allows hazardous waste facilities to provide for financial assurance with the use of a variety of mechanisms including: trust funds, surety bonds, letters of credit, insurance policies, financial test and corporate guarantees. Recent events (including instability in financial markets, problems with corporate accounting practices, bankruptcy issues with a major utility company, and the recent action by DTSC to take over operational control of a landfill in closure) have caused DTSC to reevaluate the stability and security of the existing financial assurance mechanisms used for hazardous waste facilities.

Certain hazardous waste facilities (for example, hazardous waste landfills) are required by Title 22, California Code of Regulations to monitor and care for the facility for 30 years after the completion of closure (postclosure). Some closed facilities may require more than 30 years of postclosure monitoring and care (postclosure period). Although Title 22, California Code of Regulations allows DTSC to extend the postclosure period on a site specific basis, DTSC is evaluating revision of the regulations to extend the 30 year postclosure period requirement or other alternatives that would provide equivalent postclosure care.

DTSC has a strong commitment to public involvement. As part of the reevaluation process, DTSC is holding a workshop with the public, the regulated community and other interest groups regarding the use and security of financial assurance and extension of the postclosure period. DTSC is soliciting discussion among interested parties regarding the issues of financial assurance and the postclosure period. Specific topics that DTSC would like to discuss during the workshop are:

Extension of the 30 year postclosure period

Some areas for discussion:

1. Validity of the 30 year postclosure period.
2. The purpose of the postclosure period
3. Criteria used to establish postclosure activities
4. Available financial assurance mechanisms for periods greater than 30 years

The use of the financial test and corporate guarantee

Some areas for discussion:

1. The origin of the financial test and corporate guarantee.
2. What assurance does the financial test and corporate guarantee provide?
3. Basis for the elements of the financial test. Are they still valid?
4. "Negative Assurance" language. What "value" does it provide to the financial test?

The use of captive insurance

Some areas for discussion:

1. Does captive insurance provide the same level of assurance as third party insurance?
2. Should the use of captive insurance be allowed?
3. What assurance is provided by the licensing process for captive insurers in Vermont and other states? Would additional benefit be provided by requiring captive insurers to be licensed in California?
4. Should the use of captive insurance be limited to certain types of assurance? For example, liability only.

DTSC's website contains discussion papers on the topics mentioned above. It is anticipated that the workshops will follow the discussion outlined in these papers. Go to our Web site at www.dtsc.ca.gov and click on the "Laws, Regs & Policies" link. Locate the "Regulation Concepts" table under the "DTSC Rulemaking" section to view the discussion papers.

Participants are encouraged to download and review these papers prior to the workshop.

Interested parties may also subscribe to an email list (listserv) in order to receive notices and information by email. Subscription may be made at: <http://www.calepa.ca.gov/Listservs/dtsc/>.